THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.15771 OF 2006

DATED: 28 -07-2006

Between:

A.Raghuramulu and another

… Petitioners

And:

The Commissioner, Municipal Corporation of Hyderabad, Hyderabad and another

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.15771 OF 2006

O R D E R:

The petitioner is alleged to have made unauthorized constructions enclosing parking spaces in the cellar portion of his building bearing D.Nos.1-8-135/1 and 216/1/,2,3 and 4, situated at Prendergast Road, Secunderabad. By the impugned proceedings dated.27-07-2006 the 1st respondent in purported exercise of powers under Sec.636 of the Hyderabad Municipal Corporation Act,1955(for short "the Act") called upon the petitioner to remove the unauthorized constructions and restore the parking space within 24 hours failing which the respondents would take action for demolition of unauthorized construction and for restoration of parking space under the provisions of the Act and expenses incurred therefor would be recoverable from the petitioners as provided under the Act.

The petitioners assail the above notice on the ground that under Sec.452 of the Act, there is a salutary provision for issuing a notice calling upon the person who has made constructions or has carried out any work contrary to the provisions of the Act and bye-laws, to show cause why the building or work be not removed, duly affording him an opportunity to submit his objections or explanation to the proposed action and thereafter to take action in accordance with law as is deemed appropriate. The power under Sec.636 of the Act is harsh and draconian and brings about an imminent action for demolition without following the procedural requirements under Sec.452 of the Act, is a substance of the contention urged for challenging the impugned notice.

Having heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents-Muniipality Smt.G.Jyothi Kiran, the writ petition is disposed of at the stage of admission. The impugned notice issued by the 1st respondent dated.27-07-2006 is quashed. The respondents shall expeditiously invoke the power following the procedure under Sec.452 of the Act, fixing a define time limit for the writ petitioners to respond. On receiving his response after affording an opportunity to make a personal presentation, if the 1st respondent so considers it appropriate, the 1st respondent shall take appropriate steps and shall pass orders to ensure that the building of the petitioners is in conformity with the provisions of the Act and with the approved/sanctioned building plan and for removal of any deviations from the approved and sanctioned plan. Deviations from the sanctioned plan cannot however be condemned. No order as to costs.

GODA RAGHURAM,J

28TH JULY 2006

Note:

Issue CC
in two days
(B/O)
***TSNR**